

Congress of the United States
Washington, DC 20515

March 28, 2014

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

**Re: 2010 Quadrennial Regulatory Review of Broadcast Ownership Rules; Promoting
Diversification of Ownership in the Broadcast Services (MB Docket Numbers 09-182 & 07-294)**

Dear Chairman Wheeler:

As Chairs of the Congressional Hispanic Caucus, the Congressional Black Caucus, and the Congressional Asian Pacific American Caucus, we write to urge the Commission in the strongest of terms to heed its statutory obligations found in Sections 202(h) and 257 of the Communications Act, and make ownership diversity a primary focus of your upcoming 2014 Quadrennial Regulatory Review of the Broadcast Ownership Rules.

The Commission's efforts to promote diversity in broadcasting ownership have languished for a number of years. We have been closely monitoring your early statements and actions pertaining to diversity and media ownership. In them, we have found an equal measure of reasons for optimism but we also harbor some reservations and concerns. Your stated intent to abandon ill-fated proposals to relax media ownership limits and to tackle sharing arrangements that impugn and harm diversity, localism and competition was significant. However, your recent decision terminating the *Multi-Market Study of Critical Information Needs* after miscast criticisms were leveled at the agency for sponsoring the study was seriously disappointing.¹

Available ownership statistics are both telling and compelling. Over the past decade, the numbers of minority and female owners of full power television and commercial radio stations have fallen precipitously. Despite Latinos, African Americans, Asian Americans, Native Americans, and other communities of color making up more than thirty-six percent of the overall US population, in 2011 these groups only owned about three percent of full-power television stations.² In fact, according to the Commission's 2011 data, which is the most recent data available, out of 1,348 full power television stations, only thirty-nine were owned by Latinos (with almost half located in Puerto Rico), ten by African Americans, and six by Asian

¹ Among other things, the *Multi-Market Critical Information Needs Study*, as proposed would have examined the composition and concentration of ownership in modern-day news and information ecosystems (in a number of markets across the country).

² In its 2000 report on minority ownership, the Minority Telecommunications Development Program, which was formerly developed by the National Telecommunications & Information Administration, reported that 187 minority broadcasters owned 449 full power commercial radio and television stations, or 3.8 percent of the 11,865 stations that were licensed in the US at that time. From these numbers, it was further reported that 175 minority broadcasters owned 426 commercial radio stations, or four percent of the nation's total number of radio stations, and that minorities owned 23 full power commercial television stations, representing only 1.9 percent of the country's total number of licensed commercial TV stations. See <http://www.ntia.doc.gov/legacy/opadhome/mtdpweb/01minrept/mtdpexecsum.htm>

Americans.³ Women make up fifty-one percent of the population but only own about seven percent of full-power commercial radio and television stations. These numbers are woeful.

We believe that an urgent need for increased diversity has been demonstrated and that the enactments of Congress and the interpretations of those laws and instructions from the courts are binding and unambiguous. A number of statutory obligations imposed on the Commission require it to not only report on economic barriers to entry of small business and firms owned by women and people of color, but to formulate policies and legislative recommendations that promote participation by these entities. Additionally, the courts have directed the Commission to consider whether its revised media ownership rules would promote diverse media ownership generally, or affect prospects of minorities and women to own broadcasting station. In 2011, the U.S. Court of Appeals for the Third Circuit admonished the FCC—for a second time—for relaxing broadcast ownership rules but “punt[ing] yet again” on gathering “the information required to address” challenges in encouraging and promoting diversity in media ownership.⁴ The Court remanded the decision back to the FCC, stating, “[O]wnership diversity is an important aspect of the overall media ownership regulatory framework.”⁵ Indeed, during its 2010 review of media ownership rules, the FCC conceded that it did not have sufficient data to satisfy the court’s mandate. Little measurable progress has been made in responding to the court’s concerns in recent years.

Approximately two and a half years remain in your chairmanship. But within the first two months of your tenure, much of the limited progress that the Commission made in responding to the aforementioned deficits in diverse ownership was undone by your action to abort the Critical Information Needs studies. Notwithstanding the complexities around your decision, we would have preferred an outcome in which you salvaged defensible components from these important studies, which would not have infringed upon the First Amendment and delivered valuable insights into how widely diverse news, educational and informational programming is disseminated to the American people.⁶

The people of this great nation cannot afford any additional delay. We are particularly troubled that these downward trends have occurred at a time when the respective share of the overall population comprised of people of color has increased. Real progress cannot be made by taking one step forward and two paces back. We urge you to firmly set the Commission on a course that promotes pro-diversity policies, backed by solid data and able to withstand judicial scrutiny during the 2014 quadrennial review.

We appreciate the opportunity to express our views on this critically important issue and look forward to working with you to achieve these goals.

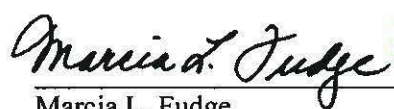
³ It is reasonable to presume that current actual ownership percentages are lower due to a sizeable number of missing and incomplete ownership filings that were most recently prosecuted by broadcasters in their biennial ownership reports.

⁴ Prometheus Radio Project v. FCC, 652 F.3d 431, 472 (3d Cir. 2011)

⁵ *Id.*

⁶ The Commission should also continue to refine the transparency and accuracy of its ownership data collection process (FCC Form 323) and begin to fully analyze trends in data about ownership by women and people of color. Further, it must analyze the impacts of its rules and regulations on ownership by women and communities of color.

Sincerely,



Marcia L. Fudge

Chair

Congressional Black Caucus



Judy Chu

Chair

Congressional Asian Pacific
American Caucus



Rubén Hinojosa

Chair

Congressional Hispanic Caucus

cc: Commissioner Clyburn
Commissioner Rosenworcel
Commissioner O’Rielly
Commissioner Pai



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

TOM WHEELER
CHAIRMAN

March 31, 2014

The Honorable Marcia L. Fudge
Chair
Congressional Black Caucus
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Judy Chu
Chair
Congressional Asian Pacific American Caucus
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Rubén Hinojosa
Chair
Congressional Hispanic Caucus
U.S. House of Representatives
Washington, D.C. 20515

Dear Representatives Fudge, Chu, and Hinojosa:

Thank you for your letter of March 28, 2014 regarding the Quadrennial Review of Broadcast Ownership Rules.

I agree with you, "The Commission's efforts to promote diversity in broadcasting ownership have languished for a number of years." Commissioner Clyburn has worked tirelessly to change that and I intend to stand with her.

I appreciate your support for the effort we have undertaken to end the broadcast ownership sharing arrangements that, as you say, "impugn and harm diversity, localism and competition." The facts speak for themselves; the number of minority-owned broadcast television licenses has declined precipitously (from unacceptably low levels to begin with). Sharing agreements that are part of schemes affording incumbent local broadcasters unfair advantages in station acquisitions have only exacerbated that problem. Permitting such collusive activity is anti-diversity of voices and anti-diversity of ownership. With the support of my colleagues, we have forced that rule-skirting practice into the light of day.

At the same time, we recognize that the economics of some small broadcasters may be enhanced by an appropriate independence-respecting relationship with another licensee in the market. For this explicit purpose Commissioner Clyburn rightly insisted that the Order should provide a speedy target for resolution of these kinds of requests – ninety days from the close of the record. As the CEO of the agency, I am committed to beating that deadline. I believe this is

The Honorable Marcia L. Fudge
The Honorable Judy Chu
The Honorable Rubén Hinojosa
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possible for deserving stations for the reason that they will be able to present a set of simple and convincing facts built around the statutory goals of competition, diversity and localism.

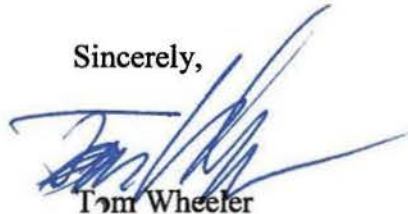
I understand your concern over the end of the Critical Information Needs study. And you are correct that the Commission must find a path forward that will allow the adoption of sustainable policy to fulfill the goals of the Communications Act, including increased diversity and opportunity. At the same time, your suggestion that we should have "salvaged defensible components" of the study indicates an awareness that parts of how the consultant wrote the survey were not defensible. I made a decision that the goals of the necessary research (and here I emphasize the necessity of gathering "the information required to address" media ownership issues) would be best served by a new approach to the agreed-upon challenge. It was my decision and my decision alone.

In a letter dated the same day as yours, I wrote to the leaders of the Commerce Committees of the House and Senate that I intended to roll the 2010 Quadrennial Media Review into the 2014-mandated Review and to complete the Review by June 30, 2016. I've enclosed a copy of that letter for your information. As you point out, the record in the 2010 Review on ownership diversity was inadequate. We will form a special team to get this job done – and I pledge that this team's charter will expressly include the goal of improving ownership diversity.

We are not waiting for a report, however. Commissioner Clyburn's initiative on foreign investment has opened new sources of capital, and the elimination of the minority ownership-stifling circumvention of the Commission's ownership rules will create opportunities for that capital to be put to work. Beyond that I can assure you that we have returned to the statutory requirement that the role of the Commission is to promote competition, diversity and localism.

Thank you for your letter.

Sincerely,



Tom Wheeler

Enclosure

cc: Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Rielly